



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: NOVEMBER 07, 2022

IN THE MATTER OF:

Appeal Board No. 624490

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 624490 and 624491, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed June 14, 2022, insofar as they overruled the initial determinations holding the claimant ineligible to receive benefits, effective June 1, 2020 through June 7, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective June 8, 2020 through December 27, 2020, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not adequately developed with respect to whether the claimant registered and certified as required, and whether she made adequate attempts to contact the Department of Labor to ask about any problems she was having.

The claimant is directed to have the 73 pages of the file that were previously sent to her

available at the further hearing. If the claimant cannot locate these documents, she is directed to contact the Hearing Section at least 5 days before the hearing and request that the file contents be sent to her.

The claimant should be confronted with the entries on the Call History Report (in evidence as Hearing Exhibit 3), specifically the entries indicating the reasons for the calls that are reported on the document. In addition, the claimant shall be questioned with particularity regarding whether the report accurately reflects the number and frequency of calls she made to the DOL from June 1, 2020 to August 2020, and between on and after August 28, 2020 through December 27, 2020.

The claimant shall also be questioned regarding her testimony that after she filed a new claim in August 2020, she was told that "things were confused" because she had two open claims. Inquiry shall be made as to when this call took place, and what else was said to the claimant during this call.

Since the claimant testified that she made many more calls than are recorded on the Call History Report produced by the Department of Labor, but is unclear about the number of calls she placed, to whom, and when, she is directed to produce telephone records for the period at issue, from June 1, 2020 through December 27, 2020, for the phone or phones she used to contact the Department of Labor.

The Commissioner of Labor shall be represented at the further hearing, and is directed to produce an individual to testify regarding the claimant's benefit claims and certifications, and the authenticity and contents of the Call History Report, received into evidence as Exhibit 3, and Certification Record Report, marked in the file as Exhibit 1 but not received into evidence. The witness should also be prepared to testify regarding the dates the claimant applied for unemployment benefits, specifically whether she filed claims in May 2020 and again in August 2020, and whether the claimant would have been able to file a claim in August 2020 if she had already filed a claim in May 2020. Summaries of the claimant's application dates, in the file at pages 38 and 54, but not made part of the record, shall be received into evidence after the appropriate confrontation and opportunity for objection. The claimant's completed application for benefits with a claim date of September 20, 2018 (in the file at pages 42, 43, and 44) shall also be received into the record.

The Commissioner's witness shall be prepared to address the claimant's testimony that she must have called the Department of Labor 100 or 200 times between June 8, 2020 and December 27, 2020, whether a record of such calls exists, and if it does not, why it does not. This witness should be prepared to address the claimant's testimony that after August 20, 2020 she did not

certify because she could not get in touch with anyone at the telephone claims center. This testimony shall include, but not be limited to, testimony regarding whether the Department was experiencing problems with its certification and filing systems during this time. The witness should be questioned about the WebClaim Scorecard, in the file at pages 29 through 37, but not made part of the record, and shall be prepared to authenticate and clarify what this document reports, and how it relates to the claimant's contentions that she was not able to reach the Department when she called.

The Commissioner's representative is directed to produce the claimant log reflecting all communications between the claimant and the Department of Labor during the periods at issue in the initial determinations.

All documents produced by the parties, or referenced in the Board's remand, that have not already been received into evidence, shall be received into the record after the appropriate confrontation and opportunity for objection. In addition, the hearing Judge shall mark and receive into evidence the Certification Record Report, physically marked as Hearing Exhibit 1, but not properly identified and entered into evidence on the record.

The parties are placed on notice that failure to produce the evidence directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, and concluding that the evidence not produced would not have supported the party's position.

The hearing Judge may receive into the record any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as they overruled the initial determinations of ineligibility on the bases of failure to certify and failure to register, be, and the same hereby is, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of failure to register and failure to certify, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the initial determinations holding the claimant ineligible to receive benefits, effective June 1, 2020 through June 7, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective June 8, 2020 through December 27, 2020, on the basis that the claimant did not comply with registration requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER